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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,

Plaintiff,

vs.

FIDELITY HOME ENERGY, INC.,

Defendant.

Case No.:

COMPLAINT

CIVIL RIGHTS – EMPLOYMENT
 DISCRIMINATION

JURY TRIAL DEMAND

NATURE OF THE ACTION

The United States Equal Employment Opportunity Commission brings this action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of national origin and to provide appropriate relief to Charging Party Ayesha Faiz who was adversely affected by such practices. As alleged below, Fidelity Home Energy, Inc. subjected Ms. Faiz to a hostile work environment based on her Afghan national origin and constructively terminated her employment.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to §706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C. §2000e-5(f)(1) and (3) and §102 of the

1 Civil Rights Act of 1991, 42 U.S.C. §1981a.

2 2. Venue is proper in the United States District Court for the Northern District of
3 California because the alleged unlawful employment practices were committed within the city of San
4 Leandro and the county of Alameda.

5 **INTRADISTRICT ASSIGNMENT**

6 3. This action is appropriate for assignment to the Oakland Division of this Court because
7 the unlawful employment practices alleged were committed in Alameda County, which is within the
8 jurisdiction of the Oakland Division.

9 **PARTIES**

10 4. Plaintiff, the Equal Employment Opportunity Commission (EEOC), is the agency of
11 the United States of America charged with the administration, interpretation, and enforcement of Title
12 VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

13 5. At all relevant times, Defendant, Fidelity Home Energy, Inc. (the Employer or
14 Defendant) has continuously been a California corporation doing business in the State of California
15 and the City of San Leandro, and has continuously had at least 15 employees.

16 6. At all relevant times, Defendant has continuously been an employer engaged in an
17 industry affecting commerce, within the meaning of §701(b), (g) and (h) of Title VII, 42 U.S.C.
18 § 2000e(b), (g) and (h).

19 **ADMINISTRATIVE PROCEDURES**

20 7. More than 30 days before the filing of this lawsuit, Ayesha Faiz filed a timely charge
21 with the EEOC alleging that Defendant violated Title VII.

22 8. On August 20, 2018, the EEOC issued to Defendant a Determination for Ayesha Faiz's
23 charge finding reasonable cause to believe, *inter alia*, that Defendant violated Title VII by subjecting
24 Ms. Faiz to harassment and constructive discharge based on her national origin. The EEOC invited
25 Defendant to join in informal conciliation methods in a collective effort toward a just resolution of
26 Ms. Faiz's charge.
27

1 18. Within the first week of her employment, Ms. Faiz was advised of and personally
2 observed Defendant's adherence to a discriminatory practice of denying service to leads who
3 Defendant's employees perceived to be of Middle Eastern or Indian descent. Ms. Faiz understood,
4 upon information and belief, that Defendant's CEO, Bradley Smith, imposed the practice.

5 19. Defendant's Representative Services Supervisor (RSS), Leata Tufano, informed Ms.
6 Faiz about the discriminatory policy during her initial training. Ms. Tufano instructed Ms. Faiz to try
7 to discern by last name whether a lead was of Middle Eastern or Indian descent and directed her to tell
8 callers perceived to be Middle Eastern or Indian that Defendant did not have any available
9 appointments, even when this was not true. Defendant's RSS also charged Ms. Faiz to tell these callers
10 that Defendant would send them information about its services even though Defendant had no
11 intention to mail the information to them.

12 20. Ms. Tufano also demonstrated for Ms. Faiz how to use Google to screen caller names
13 if she was uncertain whether the lead was Middle Eastern or Indian. She showed Ms. Faiz how to
14 search the lead's name and view images of people with the same last name as a method to try to discern
15 the individual's national origin. When Ms. Tufano concluded that the individual was likely Middle
16 Eastern or Indian, she cancelled the appointment.

17 21. Ms. Faiz learned that Defendant used its internal database to track leads based on their
18 ethnicity. Defendant used an "Ethnicity" field to place leads on an internal Do Not Call list when their
19 names appeared to be Indian or Middle Eastern. Ms. Faiz also observed that Defendant's employees
20 annotated database records for individuals who appeared to be Indian or Middle Eastern with
21 comments such as "Not Qualified" or "We Won't Run This" or "Indian Name!" Ms. Faiz also saw a
22 post-it note on an employee's computer that said, "No Indians."

23 22. Defendant instructed Ms. Faiz to insert comments, such as "NQ" or "Not Qualified" in
24 database notes for leads that she knew the company did not want to pursue because they were likely
25 Middle Eastern or Indian. Defendant also required Ms. Faiz to instruct subordinate telemarketers to
26 adhere to the discriminatory practice.

27 23. Ms. Faiz followed Defendant's instructions and rejected leads of perceived Middle

1 Eastern or Indian descent, although she found the practice offensive. She was compelled to adhere to
2 the discriminatory policy almost daily.

3 24. Defendant's practice of discriminating against Middle Eastern and Indian potential
4 customers caused Ms. Faiz considerable distress and anxiety, particularly since many of the people
5 targeted by the policy had last names shared by members of her own family and community.

6 25. Throughout her tenure, Ms. Faiz raised her concerns about and objections to the
7 discriminatory practice to multiple supervisors. Nevertheless, the practice persisted causing a
8 discriminatorily hostile work environment for Ms. Faiz.

9 26. The effect of the practices described in paragraphs 14 through 25 above has been to
10 deprive Ms. Faiz of equal employment opportunities and otherwise adversely affect her status as an
11 employee, because of her national origin, Afghan and Middle Eastern.

12 27. The unlawful employment practices described in paragraphs 14 through 25 above were
13 intentional.

14 28. The unlawful employment practices complained of in paragraphs 14 through 25 above
15 were done with malice or with reckless indifference to the federally protected rights of Ms. Faiz.

16 **Second Claim – Constructive Discharge**

17 29. The EEOC hereby incorporates the allegations of paragraphs 1 through 25 above as
18 though fully set forth herein.

19 30. Since the beginning of November 2015, and thereafter, Ms. Faiz endured a workplace
20 rife with discrimination directed toward Middle Eastern and Indian people. Almost daily, she was
21 required to adhere to a discriminatory practice that excluded customers of Middle Eastern and Indian
22 descent. She questioned multiple supervisors about the policy and complained about it. Her
23 complaints were futile. Defendant continued to discriminate against Middle Eastern and Indian
24 potential customers.

25 31. Unable to continue working under discriminatory conditions, Ms. Faiz sent a text to
26 Defendant on December 7, 2015 writing, in relevant part: "I've been really uncomfortable working
27 [here] knowing the company refuses to service middle easterners or Indians. . . It makes me sick to

1 know that we refuse to service a particular ethnicity of people. We literally go out of our way to single
2 them out.”

3 32. The acts of Defendant described in paragraphs 29 through 31 above and the First Claim
4 for Relief made Ms. Faiz’s working conditions so intolerable that a reasonable person would have felt
5 compelled to resign. Ms. Faiz felt compelled to resign and was constructively discharged on
6 December 7, 2015.

7 33. The effect of the actions described in paragraphs 29 through 31 above has been to
8 deprive Ms. Faiz of equal employment opportunities and otherwise adversely affect her status as an
9 employee.

10 34. The unlawful employment practices complained of in paragraphs 29 through 31 above
11 were intentional.

12 35. The unlawful employment practices described in paragraphs 29 through 31 above were
13 done with malice or with reckless indifference to the federally protected rights of Ms. Faiz.

14 **PRAYER FOR RELIEF**

15 Wherefore, the EEOC respectfully requests that this Court:

16 36. Grant a permanent injunction enjoining Defendant Employer, its officers, agents,
17 servants, employees, attorneys, successors, and all persons in active concert or participation with it,
18 from creating, failing to prevent and failing to promptly correct an offensive, abusive, intimidating,
19 and hostile work environment on the basis of national origin, and/or engaging in any other employment
20 practice that discriminates on the basis of national origin.

21 37. Order Defendant Employer to institute and carry out policies, practices, and programs
22 which provide equal employment opportunities for workers of Afghan, Middle Eastern or Indian
23 descent, and which eradicate the effects of its past and present unlawful employment practices.

24 38. Order Defendant Employer to make whole Ms. Faiz, by providing appropriate backpay
25 with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary
26 to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement
27 of Ms. Faiz.

39. Order Defendant Employer to make whole Ms. Faiz by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including job search expenses and medical expenses, in amounts to be determined at trial.

40. Order Defendant Employer to make whole Ms. Faiz by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices described above, including inconvenience, pain and suffering, loss of enjoyment of life, anxiety, stress, and humiliation, in amounts to be determined at trial.

41. Order Defendant Employer to pay Ms. Faiz punitive damages for its malicious and reckless conduct, as described above, in amounts to be determined at trial.

42. Grant such further relief as the Court deems necessary and proper in the public interest.

43. Award the EEOC its costs of this action.

JURY TRIAL DEMAND

The EEOC requests a jury trial on all questions of fact raised by its complaint.

JAMES L. LEE
DEPUTY GENERAL COUNSEL

GWENDOLYN YOUNG REAMS
ASSOCIATE GENERAL COUNSEL

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
131 M Street, N.E.
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Dated: March 7, 2019

/S/ Roberta L. Steele
ROBERTA L. STEELE
Regional Attorney

Dated: March 7, 2019

/S/ Marcia L. Mitchell
MARCIA L. MITCHELL
Supervisory Trial Attorney

Dated: March 7, 2019

/S/ Ami Sanghvi
AMI SANGHVI
Senior Trial Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
San Francisco District Office

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
U.S. Equal Employment Opportunity Commission
450 Golden Gate Ave., 5th Fl. W, P.O. Box 36025
San Francisco, CA 94102

DEFENDANTS

FIDELITY HOME ENERGY, INC.

County of Residence of First Listed Defendant Monterey
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting <input checked="" type="checkbox"/> 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities-- Employment 446 Amer. w/Disabilities--Other 448 Education	PERSONAL INJURY 365 Personal Injury -- Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty OTHER 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-- Conditions of Confinement	625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent--Abbreviated New Drug Application 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS--Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation--Transfer ☐ 8 Multidistrict Litigation--Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. §2000e-2 & 5 [Civil Rights Act of 1964]; 42 U.S.C. §1981a [Civil Rights Act of 1991]

Brief description of cause:
Unlawful employment practices on the basis of a hostile work environment and constructive termination.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. **DEMAND \$** **CHECK YES only if demanded in complaint: JURY DEMAND:** ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA-MCKINLEYVILLE

DATE 03/07/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Ami Sanghvi

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
 - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.